



**Informal Hearing Determination**

**Company:** Meg/Lynn Land Company **Permit No.:** 1101800  
**Subject:** Notice of Violation LJJ0001169  
**Conference:** September 12, 2014@ 8:30 AM **Location:** BSG Office  
**Participants:** Leslie Vincent, PE

On September 12, 2014, an informal hearing was held at the Big Stone Gap office of the Department of Mines Minerals and Energy (Room 116), in reference to the fact of violation for Notice of Violation LJJ0001169. Representing Meg/Lynn Land Company, Inc was Mr. Leslie Vincent, PE. The hearings officer was Harve Mooney. Mr. Vincent was afforded the opportunity to provide comments and/or information during the informal hearing. There were no attendees from the general public at this hearing.

**Summary of Informal Hearing**

Notice of Violation LJJ0001169 (1 of 2) was issued to the operator on June 23, 2014, for failure to submit the corrections to Renewal Application #1008582 by the deadline of 5/29/14. Notice of Violation LJJ0001169 (2 of 2) was issued to the operator on June 23, 2014, for failure to meet the water monitoring requirements for the 1st quarter of 2014. Violation 2 of 2 was a non remedial violation.

**Notice of Violation LJJ0001169 1 of 2 (AO)**

Mr. Vincent noted that there was one company in charge of preparation of renewal applications. At that time the company had more than twenty (20) renewals that were under review for approval. Mr. Vincent stated that the two-week turnaround (re-submittal deadline) was not enough time to prepare the comment responses on the renewal applications. He stated the deadline was arbitrary and inadequate. Mr. Vincent noted that the deadline was arbitrary and capricious since a week later, his request for an extension to the re-submittal deadline was approved for several applications.

Mr. Vincent also noted that it was ludicrous to set a deadline when the DMLR placed a hold on the application pending the NPDES review. He stated he was working on 24 applications and he only got these violations since he started working on them. Mr. Vincent said he had renewals that were due again next year and they too had item holds on them.

## Notice of Violation LJJ0001169 2 of 2 (WM)

Mr. Les Vincent began by noting that several of the violations issued (including NOV JRJ0001169) did not specify “what you did or did not do”. Mr. Vincent stated that the violation is missing water monitoring reports, and all violations should list the samples that are missing, and not just a blank statement that water monitoring was not submitted.

Mr. Vincent also noted that he believes that the missing water samples are “no flows”. He noted that the Justice Companies had phased in in-house sampling from Environmental Monitoring Incorporated, in the fourth quarter of 2013. When the samplers encountered an outfall with no discharge these were referred to company personnel, and EMI did not include them in the water submittal, as it was the responsibility of company personnel to enter these in the E-forms System. The company person had failed to submit the data, and that resulted in the missing sample points.

Mr. Vincent stated that by not specifying what specific samples were missing, it was impossible to assess an accurate civil penalty for the violations. He stated that the civil penalty should reflect the number of samples not collected as this would have a direct bearing on how serious the violation was. He noted that it was impossible to do the assessment since the correct number of missing samples could not be determined.

### **Informal Hearing Recommendation**

Notice of Violation LJJ0001169 (1 of 2) was issued to the operator on June 23, 2014, for failure to submit the corrections to Renewal Application #1008582 by the deadline of 5/29/14. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses permits, permit renewal and other permit revisions. Specifically, **Section 4VAC-25-130-774.15 of the Virginia Coal Surface Mining Reclamation Regulations** governs submittal of information required by the DMLR in review of applications, Specifically, subsection (c) (vi) notes,

***(c) Approval process.***

***(1) Criteria for approval. The division shall approve a complete and accurate application for permit renewal, unless it finds, in writing that--***

- (i) The terms and conditions of the existing permit are not being satisfactorily met;*
- (ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and this chapter;*
- (iii) The requested renewal substantially jeopardizes the permittee's continuing ability to comply with the Act and the regulatory program on existing permit areas;*
- (iv) The permittee has not provided evidence of having liability insurance or self-insurance as required in 4VAC25-130-800.60;*

*(v) The permittee has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the division might require pursuant to Subchapter VJ; or*

***(vi) Additional revised or updated information required by the division has not been provided by the applicant.***

The Virginia Coal Surface Mining Reclamation Regulations clearly require each permittee seeking to continue mining to submit and have approved a renewal application. The Division notified the permittee in a timely manner that information necessary for the approval of the renewal was due on May 2, 2014. The permittee did not submit the required comment responses within the time allowed by the Division. A notice of violation was issued as a result.

Notice of Violation JRJ0001169 (violation 2 of 2) was issued to the operator on June 23, 2014 for failure to meet the water monitoring requirements for the 1st Quarter of 2014. The standard for this violation is addressed within the Virginia Coal Surface Mining Reclamation Regulations, which addresses water monitoring and the submission of the analysis. Specifically, **Section 4VAC-25-130-816.41 of the Virginia Coal Surface Mining Reclamation Regulations** governs the submittal of water monitoring to the DMLR. Specifically, subsections “c” and “e” of this section note,

*(c) Ground-water monitoring.*

*(1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under 4VAC25-130-780.21(i). The division may require additional monitoring when necessary.*

*(5) Ground-water monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h).*

*(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4VAC25-130-774.13, the division may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--*

*(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or*

*(ii) Monitoring is no longer necessary to achieve the purposes set.*

*(e) Surface-water monitoring.*

*(1) Surface water monitoring shall be conducted according to the surface-water monitoring plan approved under 4VAC25-130-780.21(j). The division may require additional monitoring when necessary.*

*(2) Surface-water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4VAC25-130-773.17(e) and 4VAC25-130-780.21(h). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.*

*(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4VAC25-130-774.13, the division may modify the monitoring requirements in accordance with the NPDES permit, including the parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this Paragraph, that--*

*(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or*

*(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4VAC25-130-780.21(j).*

The company did not offer sufficient evidence that the water sampling was timely submitted to the DMLR to support its position. If indeed there were “no flows” as the representative suggests, these were additional reports that should have been submitted but were not. A review of the E-Forms System (which accepts electronic copies of the water monitoring reports) shows the corrected data not submitted until August, 2014.

There is some merit to the company representative’s argument that the specifics of what samples were missing does indeed affect the seriousness of a violation issued for water monitoring. Certainly, the number of delinquent reports would loom as a factor in the assessment of a civil penalty. However, that is a matter for an assessment conference, and it is not bearing on the fact of violation.

The role of the delinquent monitoring report is to inform reclamation field staff of the status of the water monitoring performance standard in relation to compliance with VCSMR regulations.

The lack of the specific missing samples in the violation report does not counter the fact that water monitoring reports were not submitted by the deadline date of April 30, 2014. Indeed, at the time of the preparation of the delinquency report, the Division had not received any of the water quality data for the sampling points in question, and only received the data after the delinquent report was prepared.

**Based on the findings of this hearing, it is this hearings officer opinion that this violation was properly issued, and it is recommended that Notice of Violation LJJ0001169 (2 Violations) be affirmed.**

Informal Hearings Officer: Harve A Mooney

Date: 09/19/14